

# In the Supreme Court of the State of Idaho

IN RE: IDAHO CODE OF JUDICIAL CONDUCT

ORDER AMENDING IDAHO  
CODE OF JUDICIAL CONDUCT

The Court having reviewed a recommendation to amend the Canons, and being fully informed;  
NOW, THEREFORE, IT IS HEREBY ORDERED, that Canon 5A(4) of the Idaho Code of  
Judicial Conduct be, and hereby is, amended as follows:

## CANON 5

### A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

#### A. All Judges and Candidates.

(1) Except as authorized in Sections 5B(2) and 5C(1), a judge or a  
candidate\* for election or appointment of judicial office shall not:

(a) act as a leader or hold an office in a political  
organizations;

(b) publicly endorse or publicly oppose another candidate for  
public office;

(c) make speeches on behalf of a political organization\*;

(d) publicly endorse or seek the endorsement of a political  
organization; or

(e) solicit funds for, pay an assessment to or make a  
contribution to a political organization or candidate.

(2) A judge may attend political gatherings as long as by doing so  
the judge is not endorsing or seeking the endorsement of a political  
organization. A judge may speak at political gatherings concerning matters  
of law, the legal system or the administration of justice.

## Commentary

The purpose of the Canon is to prohibit judges from engaging in conduct which promotes partisan political activities. The Canon allows judges to attend and observe significant historical events, to participate in patriotic events and to speak at political gatherings concerning matters of the law, the legal system or the administration of justice .

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not “an office in a political organization.”

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

**(3) A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election.**

**(4) A candidate\* for a judicial office:**

**(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate’s family\* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;**

## Commentary

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

**(b) shall prohibit employees and officials who serve at the pleasure of the candidate,\* and shall discourage other employees and officials subject to the candidate’s direction and control from doing on the candidate’s behalf what the candidate is prohibited from doing under the Sections of this Canon;**

**(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly\* permit any other person to do for the candidate\* what the candidate is prohibited from doing under the Sections of this Canon;**

**(d) shall not:**

**(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;**

**(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or**

**(iii) knowingly\* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.**

### **Commentary**

Section 5A(34)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to Judicial Council and Governor. See also Rule 8.2 of the Idaho Rules of Professional Conduct.

**(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(34)(d).**

**(f) or a judge may respond to false allegations regarding judges or the judicial system as long as the response does not violate Section 5A(4)(d)<sup>1</sup>.**

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<sup>1</sup> The 2009-2010 Desk Book incorrectly designates Canon 5A(4) as Canon 5A(3). The Desk Book version of Canon 5A incorrectly designates two subsections as "(2)".

**B. Candidates Seeking Appointment to Judicial Office.**

(1) A candidate\* for appointment to judicial office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals; and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

**Commentary**

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

**C. Judges and Candidates Subject to Public Election.**

(1) A judge or a candidate\* subject to public election\* may, except as prohibited by law\*:

(a) when a candidate for election

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

(iii) distribute pamphlets and other promotional campaign literature that do not otherwise violate the provisions of this code supporting his or her candidacy; and

**(iv) publicly advocate or publicly oppose the election of his or her opponent(s).**

### **Commentary**

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

**(2) A candidate\* shall not solicit campaign contributions in person. A candidate may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than [one year] before election and no later than [90] days after the last election in which the candidate participates during the election year. Except as required by law, a candidate's judicial election committee should not disclose the names of contributors to judicial campaigns and judicial candidates and judges should avoid obtaining the names of contributors to the judicial campaign. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.**

### **Commentary**

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

**D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, or (ii) on behalf of measures to improve the law,\* the legal system or the administration of justice.**

## Commentary

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

**E. Applicability.** Canon 5 generally applies to all incumbent judges and judicial candidates.\* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Idaho Model Rules of Professional Conduct.

### *APPLICATION OF THE CODE OF JUDICIAL CONDUCT*

Anyone who is an officer of the judicial system and who performs judicial functions, including Plan B Senior judges, and members of the Idaho Industrial Commission, are a judge within the meaning of this Code except judges "pro tempore" as appointed pursuant to Section 12, Article 5 of the Idaho Constitution and Idaho Administrative Rule (4). All judges shall comply with this Code except as provided below.

**(1) Judge Pro Tempore.** Attorneys who are appointed to act temporarily as Judges.

**(2) Retired Judges.** Retired judges (Plan A Senior judges and Plan B Senior judges who have completed their five year commitment) and judges who have resigned, who are designated to act temporarily as judges should comply with all the provisions of their Code except Canons 4C(2) and (3), 4D, 4E and 4F, and they shall refrain from the practice of law. Persons who have been recalled to act temporarily as judges should not act as lawyers in proceedings in which they have served as judges or in any other proceeding related thereto.

**F. Time for Compliance.** A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(3), 4F, 4G, 5C(1) and 5C(2) and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

## Commentary

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

IT IS FURTHER ORDERED, that these amendments shall be effective on the 22<sup>nd</sup> day of April, 2010.

DATED this 28 day of April, 2010.

By Order of the Supreme Court



Daniel T. Eismann  
Chief Justice

ATTEST: Stephen Key  
Clerk

Stephen W. Kenyon, Clerk of the Supreme Court  
of the State of Idaho, do hereby certify that the  
above is a true and correct copy of the Order  
entered in the above entitled cause and now on  
record in my office.

WITNESS my hand and the Seal of this Court 4/28/10

STEPHEN W. KENYON

By: Dorothy Beaver Clerk  
Deputy